XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक Cr.A. No. 31/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

APPELLANT Shankar Sahu, S/o Shri Manoharlal Sahu, aged about 35 years, R/o. Ramnagar, beside Kumhari Canal, Distt. Durg (CG)

Vs.

RESPONDENT State of Chhattisgarh, through Police Chowky- Kumhari, Distt. Raipur (CG)

9-10-2007

Ku. Sunita Jain, Advocate for the appellant.

Smt. Madhunisha Singh, Panel Lawyer for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 27-8-2004 passed in S.T. 124/2004 whereby learned Second Additional Sessions Judge, Durg has convicted the appellant under Section 376 of I.P.C. and sentenced him to undergo R.I. for 7 years.

3. Case of the prosecution in brief is that the prosecutrix is the step-daughter of the appellant. She resided with her father Budharu Sahu at village Potra. P.W. 2 Sukhama was deserted by her former husband Budharu long back and since then she contracted second marriage with appellant Shankar Sahu. The prosecutrix was earlier residing with her maternal grand-mother and after her death, she started residing with the appellant 5-6 months prior of the date of incident. On 11-3-2004 when she was alone in her house as P.W. 2 Sukhma had gone to work, her step-father forcibly raped her. On return of her mother, the prosecutrix narrated about the incident to

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her and thereafter both of them lodged report in the police out post, Kumhari on the same day vide Ex. P-1. The prosecutrix was sent for medical examination where Dr. P. Dani (P.W. 3) examined her and gave her report of Ex. P-4. After completing the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Durg and the same was received on transfer by learned trial Court for trial.

4. During trial, the prosecution examined 5 witnesses, thereafter statement of accused was recorded in which he pleaded innocence and false implication, however, the trial Court convicted and sentenced the appellant as mentioned above.

5. Learned counsel for the appellant submits that relations between the appellant/husband and wife were not cordial. The prosecutrix returned from her maternal grand-mother only 5-6 months prior to the date of incident. The version of the prosecutrix is unnatural and improbable as the incident is alleged to have taken place at 4.00 p.m. however, she did not raise alarm. Her version is further not corroborated by the medical report as the doctor did not find any injury over the person of the prosecutrix. There is no evidence available on record that the age of the prosecutrix was below 16 years. Thus the prosecution has not been able to establish the charge against the appellant beyond reasonable doubt. She further submits that no independent witnesses have been examined.

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6. On the other hand, learned Counsel for the State has supported the impugned judgment.

7. I have heard learned counsel for the parties. I have perused the evidence available on record as well as the impugned judgment.

8. Conviction of the appellant is based on the statement of P.W. 1 prosecutrix, step-daughter of the appellant and P.W. 2 Sukhma, wife of the appellant and mother of the prosecutrix.

9. P.W. 1 the prosecutrix has stated in her deposition that the appellant is her step-father. On the date of incident at 4.00 pm, she was alone in the home and was sleeping. The accused came and forcibly raped her. She raised alarm however, no one was present in the neighbourhood. After taking out her clothes, the appellant mounted on her and on return of mother, she narrated the incident to her. They went to lodge the report after informing about the incident to others. In the cross-examination, she has stated that she has no friend in the vicinity. Her three brothers also resided in the house. Her mother does domestic work in others' houses. The appellant and her mother are frequently engaged in quarrel on some pretext or the other. The appellant avoided talking to her. In para 8, she has stated that it is incorrect to say that the accused came, slept beside her out of mistake. However, she has admitted this fact that when the accused came to her, she was asleep. On the date of incident, her brothers had gone to play and when she shouted, since

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nobody was their in the vicinity, therefore, no one came. It is incorrect to say that she was in fact playing with the appellant. She has denied the suggestion that she is tutored by her mother.

10. P.W. 2 Sukhma, mother of the prosecutrix has also corroborated the statement of the prosecutrix. She has stated that when she returned to her home on the date of incident at 5.00 p.m. the prosecutrix told her that the accused raped her, whereupon she went to lodge report.

11. P.W. 3 Dr. P. Dani has examined the prosecutrix and has stated that on examination, she did not notice any injury over the person of the prosecutrix. There was no injury on her private part. Her vagina admitted two fingers easily. Vaginal slides were prepared and given to constable. In the cross-examination, she has admitted that the prosecutrix was habituated to sexual intercourse and that there was no external or internal injury over the person of the prosecutrix.

12. This is an unfortunate incident where the step-daughter and wife of the appellant have made heinous allegations of rape by the appellant against her step-daughter. In the cross-examination of the prosecutrix, defence has not been able to elicit anything which makes her version untrustworthy and unreliable. On the contrary, there are suggestions given by the defence that the appellant reached and slept beside her out of mistake and that both of them were in fact playing.

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The manner in which the prosecutrix has been cross-examined, in fact, gives credence to the allegations of the prosecutrix. The version of the prosecutrix is duly corroborated from the statement of Sukhma (P.W. 2) who is the wife of the appellant and they were living together as husband and wife for last 10 years. The defence has not been able to bring any evidence either on the form of cross-examination of the witness or by leading evidence in defence that the relation between the appellant and his wife was so strained that she falsely implicated the appellant with the help of her own daughter by making false allegation of rape against him. So far as argument that version of the prosecutrix is not corroborated by medical evidence is concerned, it is not the case of the prosecutrix or her mother that in the instant incident, she sustained any injury and, therefore absence of injuries over the person of the prosecutrix cannot be considered against the prosecution case to disbelieve the allegations of rape made by her in her deposition, particularly when her deposition inspires confidence.

13. In the light of the above discussion, conviction of the appellant recorded by the trial Court is based on proper appreciation of evidence available on record.

14. In the result, the appeal being devoid of substance deserves to be dismissed and it is accordingly dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

[पीछे देखिये